EDITOR'S NOTE

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(2)

No. 03-1062

Supreme Court, U.S.
FILED
MAR 31 2004
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OBED NORMAN,

Petitioner PRO SE,

TO BE RECOVERED

STATE OF WASHINGTON and
WASHINGTON STATE UNIVERSITY,

Respondents.

ON PETITION FOR WRIT OF MANDATE TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR RECONSIDERATION

OBED NORMAN
PETITIONER PRO SE
350 E. TAYLOR ROAD
#2218
SAN JOSE, CA 95112
(408) 9243650

CERTIFICATE OF RULE 44 COMPLIANCE BY PRO SE PETITIONER

Petitioner Obed Norman solemnly declares that this petition for reconsideration of Petition 03-1062 is presented in good faith and not for delay.
This petition for rehearing is restricted to substantial grounds, affidavits, and legal arguments not previously presented. The petition is restricted to the grounds specified in Rule 44.

s/ Obed Norman:
Petitioner Pro Se. Dated this 1st day of April, 2004
350 E. Taylor Street #2218
San Jose CA 95112
Tel: 408-9243650

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INTRODUCTION

This petition for reconsideration complies with the requirements of Supreme Court Rule 44.2 on account of the following:

a. The reconsideration brings to the attention of the Court additional examples of unvalidated and untrue statements presented to the jury by the defense expert Steve Olswang.

b. The reconsideration brings to the attention of the Court the context of the case that will assist the Court to consider the situation in its entirety.

c. The reconsideration also presents to the Court sworn affidavits on relevant matters by the following individuals:

i. Dr. Etta Hollins, Former Administrator at Washington Sate University and now Professor of Teacher Education, University of Southern California.

ii. Dr. William Kyle, Desmond Lee Family Professor of Science Education, University of Missouri, St. Louis. Former Editor of the leading journal in Science Education (The Journal of Research in Science Teaching).

iii. Dr. Alberto Rodriguez, Associate Professor of Science Education, San Diego State University.

iv. Earl W. Ford, President of the Vancouver Branch of the National Association for the Advancement of Colored People (NAACP).

v.Paul Kappilla, Academic ReferenceLibrarian and Instructor, Dr. Martin Luther King Library, San Jose, CA.

d. The Court's order denying Petition 03-1062 was filed on March 8, 2004 and this petition for reconsideration was filed timely before or on April 1, 2004.

ADDITIONAL FALSEHOODS BY DEFENSE EXPERT STEVE OLSWANG

The reconsideration brings to the attention of the Court additional examples of unvalidated and untrue statements presented to the jury by the defense expert Steve Olswang and presented to the court for the first time in this petition for reconsideration. These untrue statements constitute a matter of law (Fed. R. of Ev. 702 and Fed. R. of Civ. Proc. 26) and are relevant to the questions presented for review as they are the statements made under oath by an expert whose statements were not validated by the trial court as required under the discovery rules and *Daubert*. **These additional examples demonstrate that defendants' entire defense was based on falsehoods and material misrepresentations.** A miscarriage of justice will be avoided if the case is remanded to the courts below for Daubert briefing so that the jury will have the opportunity to hear validated and truthful expert testimony. Under oath Olswang made the following false statements on material and substantive issues:

1. 'They [Petitioner Norman's publications] were not cross-cited' (Trial Transcript at 356). Olswang argued in court that Petitioner's scholarship showed no thematic coherence as petitioner's publications were not cross-cited. The documents Olswang reviewed

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show a cross-citation. Olswang's expert opinion on a pivotal point of the respondents' case is based on a falsehood. Respondents had stated in their official documents that the main reason for the tenure denial was the lack of coherence in petitioner's scholarship.

2. 'She [White comparator Hatch] had …an international reputation. Quite a few of her materials had been published in England' (Trial Transcript at 375). Nothing by Hatch had been published in England. Olswang's factual basis for his opinion regarding Hatch's 'international reputation' is false.

3. 'She [Hatch] had eight articles in '96, 97, and six more, including curriculum guides in '96' (Trial Transcript at 374). This statement is contradicted in its entirety by the record of Hatch's publication record (see Affidavit by academics in appendix).

4. Olswang stated falsely under oath that external reviewer Dr. Atwater was 'dependent for her summer salary' on petitioner's NSF grant. Dr. Atwater had never been paid anything from the NSF grant at any time. Olswang made this false statement to undercut Dr. Atwater's external review in support of petitioner's tenure application.

These falsehoods are additional to the ones already brought to the court's attention in Petition 03-1062. All these falsehoods were brought to the attention of the trial court and were all addressed in Petitioner's Fed. R. of Ev. 201 Motion of Mandatory Judicial Notice to the 9th Circuit. Defendants surprised with these falsehoods on the stand by failing to

comply with Fed. R. of Civ. Proc. 26 and with the specific discovery orders of the court.

THE CONTEXT OF THE CASE

Additionally Petitioner respectfully requests the Court to reconsider the denial of Petition 03-1062 in the light of the particular context of this case. This case is about the reputation of the courts to equitably afford the protection of the law to all. The defendants in this case have not disputed that they as well as their counsel and expert witness have lied repeatedly under oath on material and substantive points. Petitioner has invoked the myriad federal rules (see Petition 03-1062) that mandate the court to protect litigants from the lies of opposing parties. Fed. R. Civ. P. 60 allows for litigants to be held accountable for fraud and lying to the jury up to one year after the trial. Fed. R. Civ. P. 26 guarantees the due process of subjecting expert testimony to timely discovery and validation. By declining the petition the court is withholding the protection of the law from petitioner.

Petitioner respectfully points out to the court the need to protect the integrity of the judicial system. This same need has been expressed by the authors of 'Academics in Court' (University of Michigan Press, 1990. Cited in Petition 03-1062). These authors quote the following comments by one of the many individuals from whom they gathered information for their comprehensive treatise on Title VII case outcomes:.

> 'I have represented a number of academics in discrimination cases with a lack of success totally disproportionate to all other areas of my practice. It is my opinion that the unwillingness of the courts to "call a spade a spade" is extremely detrimental to the plaintiffs, to the integrity of the institutions sued and to

> our society at large. It is never pleasant to lose a lawsuit but that is quite different from the sense of outrage I have felt, and I know my clients have experienced in this area. It appears that the judiciary has made a pact with institutions of higher education to pay lip service to the law.' p. 238.

How will the respondents in this case not conclude that the court has in effect given them a license to lie? When it was discovered that journalists Jason Blair and of the New York Times and Jack Kelly of USA Today had lied they were dismissed. In contrast the respondents in this case are being rewarded by the court for lying under oath. It is crucial that courts maintain a reputation for insisting on the truthfulness of sworn testimony. By denying Petition 03-1062 for a Writ of Mandate the court is showing a disturbing tolerance for untruthfulness by litigants. Our country has suffered immensely in recent times because of the untruthfulness of certain corporate leaders. Neither the reputation of our judiciary nor our nation will be well served at this time when litigants are rewarded for lying under oath.

This case is about more than ten discrete instances of lying by respondents. These are the same respondents whose counsel told the jury in closing:

> 'Now, I told you in the opening of this case, my opening statement, that this case was about truthfulness. I submit to you that four days later the case is still about truthfulness. Nothing has changed, okay.' p.64 Trial Transcript.

After lying to the jury repeatedly, the respondents cynically stated in opening and closing that their theory of the case was that it was about truthfulness. Respondents prevailed at trial and as a matter of law their theory of the case prevailed.

This case is about truthfulness as a matter of law and for that reason the demonstrated falsehoods of the respondents must result in reversal or at least remand of the case.

The profile of respondent Washington State University is one more reason why the court should reconsider the denial. Before 1999 the College of Education and the Vancouver Branch campus had 9 black tenured or tenure track faculty. By 2001 every single black faculty had either left or been dismissed.. Dr. Etta Hollins left in 1998 after receiving two death threats in her in her WSU office. This incidence was reported to the FBI by Dr. Hollins. In 1999 a young black faculty member Dr. Collin Beckels committed suicide after WSU falsely accused him of raping a white student. As was pointed out in Petition 03-1062 WSU had similarly coerced student Bonnie Bentz-Hewlett to sign a false affidavit claiming Petitioner had harassed her sexually. The email correspondence presented to the court totally disproves this false charge by WSU and the white student.

WSU will construe a denial of Petition 03-1062 as providing a judicial imprimatur for their institutional practice of creating a hostile and dangerous working environment for black faculty by lying about them. Petitioner respectfully requests the court to reconsider its denial in the light of the pervasive falsehoods perpetrated by WSU and the impact of this conduct on many individuals.

Petitioner also requests the court to be mindful of the court's reputation as dispenser of equal protection. The 9th Circuit vacated black plaintiff Mukhtar's (cited in Petition 03-1062) jury victory because the trial court had not used the word 'reliability' in ruling on the Daubert briefs. In Mukhtar all parties had complied with the discovery orders and rendered truthful testimony. In the case at bar the respondents

had not only breached the discovery orders but their expert presented a case based entirely on demonstrated falsehoods. In fact the sworn expert testimony of Steve Olswang does not contain one single true statements on a substantive and material issue. The 9th Circuit insisted that the appellants were entitled to validated expert testimony. Petitioner respectfully asks that the due process right to validated expert testimony also be extended to him.

The court recently ordered the University of Michigan to stop awarding points for minority applicants to that University's undergraduate programs. With its point system the University of Michigan was attempting to address the historical exclusion of minorities from higher education. In the case at bar the court is being asked to stop Washington State University from fraudulently inflating the credentials of white faculty members and also to stop diminishing the credentials of black faculty members.

When the court ruled against the University of Michigan many black students interpreted that ruling as creating a less welcoming environment at Michigan and black enrollment declined significantly. The denial of Petition 03-1062 in effect upholds Washington State's University's practice to fraudulently inflate the qualifications of white faculty as they have done with Lynda Hatch and David Slavit in this case. Given the response to the Michigan ruling, there is a real danger that the denial of Petition 03-1062 may be seen as the US Supreme Court's 21st Century resurrection of the Dred Scott Principle: 'Black litigants and black employees may have rights but white institutions and the courts need not honor those rights'.

For the reasons set forth above Petitioner respectfully requests reconsideration of the denial of Petition 03-1062.
The court should extend the protection of the law to petitioner by reversing the verdict or vacating. Respondents should not be awarded $5,000 cost for lying over 15 times to a lay jury. That in itself is a gross miscarriage and travesty of justice.

Respectfully Submitted,

s/Obed Norman:
Petitioner Pro Se. Dated this 1st day of April 2004
350 E.Taylor Street #2218 San Jose, CA 95112

APPENDIX

JOINT SWORN DECLARATION BY PROFESSORS ETTA HOLLINS, WILLIAM KYLE, ALBERTO RODRIGUEZ, AND VANCOUVER NAACP PRESIDENT EARL FORD.

We, the above named individuals jointly and severally declare under penalty of perjury of the laws of the state of Washington and the United States that the following is true and accurate:

1. We are all over age 18, and competent to testify, and make this declaration of our own personal knowledge and/or review of records as set forth herein.

2. We have reviewed the expert testimony of Dr. Steve Olswang in C02-5494 FDB, the vita of Dr. Lynda Hatch, as well as the public record of Dr. Hatch's academic publications compiled by a professional librarian Paul Kappuila, Academic Reference Librarian and Instructor, Dr. Martin Luther King Library, San Jose, CA.

3. From our review of the named records and Petition 03-1062 we state the following true facts:

3.1 Dr. Lynda Hatch, appointed by WSU as Boeing Distinguished Professor of Science Education has published 5 articles in unranked journals consisting of 15 pages total.

3.2 Dr. Olswong's sworn testimony that Dr. Hatch had published 'eight articles in 96, 97' is false.

3.3 Dr. Olswong's sworn testimony that Dr. Hatch had published six articles in 2002 and a couple books in 99' is

false.

3.3 Dr. Olswong's sworn testimony that 'They [Petitioner Norman's publications] were not cross-cited' is false. Dr. Olswang's factual basis for his opinion regarding the thematic unity of Dr. Norman's scholarship is false.

3.4 Dr. Olswong testified under oath: 'She [White comparator Hatch] had …an international reputation. Quite a few of her materials had been published in England'. This statement is false. The public record does not show any publication by Dr. Hatch in England. Dr. Olswang's factual basis for his opinion regarding Dr. Hatch's 'international reputation' is false. Those of us who are active scholars in Education (Kyle, Rodriquez, and Hollins) had never heard of Dr. Hatch or her work until our involvement in this case.

3.5 Dr. Olswong testified under oath: 'In the grant area, he[Norman] had a number of grants, two primary ones, one which was a career development award, which is something that the National Science Foundation particularly gives in the field of science, particularly to minority faculty'. This statement by Dr. Olswang is a factual mischaracterization of the $500,000 research grant awarded to Dr. Norman by the National Science Foundation (NSF). The NSF describes this grant as the 'most prestigious award' awarded to 'those teacher-scholars … most likely to become the academic leaders of the 21st century.'

4. It is not accepted practice for senior academics to give false testimony while under oath in court.

5. It is not accepted practice for academic institutions to award distinguished chairs on the basis of non-existent credentials.

s/ Professor ETTA HOLLINS,

Rossier School of Education
WPH 1002 B,
University of Southern California
Los Angeles, CA 90089-4031
Email : ehollins@usc.edu
Phone: (213) 740-3292

s/ Professor WILLIAM KYLE,

E. Desmond Lee Family Professor of Science Education
University of Missouri - St. Louis
Institute for Mathematics & Science Education and Learning Technology
8001 Natural Bridge Road
St. Louis, MO 63121-4499, USA
Email: bill_kyle@umsl.edu
Telephone: 314.516.5375
Facsimile: 314.516.7025

s/ Professor ALBERTO RODRIGUEZ,

Science Education
Department of Policy Studies in Language and Cross Cultural Education
Education Building 152
College of Education
San Diego State University
5500 Campanile Drive
San Diego
CA 92182-1152
(619) 594-2687 - voice

(619) 594-1183 - fax
e-mail: arodrigu@mail.sdsu.edu

s/ EARL FORD, PRESIDENT, VANCOUVER NAACP

Vancouver Branch NAACP 1139
PO Box 1903
Vancouver, WA 98686
www.naacpvanc.org

Dated this 1st day of April 2004.